

**This Opinion is Not a
Precedent of the TTAB**

Mailed: August 14, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Genomma Lab Internacional, S.A.B. de C.V.

Serial No. 90233562
—

Kirstin M. Jahn of Jahn & Associates, LLC, for Genomma Lab Internacional, S.A.B. de C.V.

Mark Riso, Trademark Examining Attorney, Law Office 108,
Kathryn Coward, Managing Attorney.

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Before Bergsman, Greenbaum and Dunn,
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

Genomma Lab Internacional, S.A.B. de C.V. (“Applicant”) seeks registration on the Principal Register of the mark SHOT B12+ (standard characters) for

Dietary supplements containing vitamin B12;
Multivitamin preparations containing vitamin B12, in
International Class 5.¹

¹ Application Serial No. 90233562 was filed on October 3, 2020 based upon Applicant’s allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

Applicant claims ownership of Reg. No. 4358731 for SHOT B for “multivitamin preparations containing vitamin B” in International Class 5. Applicant submitted a corresponding printout from the TESS database, which shows that the mark is in standard characters, “B” is

The Trademark Examining Attorney refused registration of the mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when used on or in connection with the identified goods, so resembles the registered mark SHOT-O-B12 (typed format), for "dietary supplements, namely, vitamins," in International Class 5 ("Registrant's mark"), as to be likely to cause confusion, mistake or deception.²

The Examining Attorney also refused registration of Applicant's mark under Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), on the ground that SHOT is merely descriptive of Applicant's goods within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1051(e)(1), and must be disclaimed.

When the refusals were made final, Applicant appealed and requested reconsideration, which was denied. Applicant and the Examining Attorney filed briefs.

We affirm the likelihood of confusion refusal and therefore do not reach the other basis for refusal.

I. Likelihood of Confusion

"The Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or

disclaimed, and the registration has been maintained. May 25, 2021 Response to Office Action, TSDR 2-3. The registration has since been renewed.

² Reg. No. 2337091 issued on April 4, 2000, and has been renewed twice. A typed mark is the legal equivalent of a standard character mark. *See* Trademark Rule 2.52(a), 37 C.F.R. § 2.52(a); *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909 n.2 (Fed. Cir. 2012) ("until 2003, 'standard character' marks formerly were known as 'typed' marks.").

services of the applicant, to cause confusion [or] mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, at *2 (Fed. Cir. 2023) (cleaned up).

Our determination under Trademark Act Section 2(d) involves an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered, hereinafter referred to as “*DuPont* factors”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019); *see also In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.’”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Charger Ventures*, 2023 USPQ2d 451, at *4 (“In any given case, different *DuPont* factors may play a dominant role and some factors may not relevant to the analysis.”). “Not all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances. Any single factor may control a particular case.” *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, at *3 (Fed. Cir. 2020) (citing *In re Dixie Rests.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)). However, in any likelihood of

confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. *See In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

A. Similarity or Dissimilarity of the Goods, Channels of Trade and Conditions of Sale

Under these *DuPont* factors, we compare the goods as they are identified in the application and cited registration. *See In re Detroit Athl. Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018); *Dixie Rests.*, 41 USPQ2d at 1534; *see also Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014).

Here, the identified goods are legally identical, because the broadly worded “dietary supplements, namely, vitamins” in the cited registration encompass both the “dietary supplements containing vitamin B12” and “multivitamin preparations containing vitamin B12” identified in the application. *See In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”).

Because the goods identified in the application and registration are legally identical, and the respective identifications lack restrictions or limitations as to the goods’ nature, channels of trade, or classes of customers, we must presume that the

channels of trade and classes of purchasers are the same.³ *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion).

As for consumer sophistication, Applicant argues that there has been no confusion between the cited mark and Applicant's other registered mark, SHOT B, "in over 15 years," and therefore "purchasers of these similar goods must be careful and discriminating." App. Br., 6 TTABVUE 9. The argument is circular, speculative and without support. Moreover, even if the record showed that there has been no confusion between the cited mark and SHOT B, which it does not, such showing would be irrelevant. When determining whether a proposed mark is registrable, each application must be considered on its own record. *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) ("[The Federal Circuit], like the Board must evaluate the evidence in the present record to determine whether there is sufficient evidence"); *In re Shinnecock Smoke Shop*, 571 F.3d 1171, 91 USPQ2d 1218, 1221 (Fed. Cir. 2009) ("Applicant's allegations regarding similar marks are irrelevant because each application must be considered on its own merits."); *see also In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ("Even if some prior registrations had some characteristics similar to Nett Designs'

³ Applicant does not address the similarity of goods or their channels of trade.

application, the PTO's allowance of such prior registrations does not bind the Board or this court.”).⁴

While there is no evidence bearing on the conditions of sale, we recognize consumers may exercise a heightened degree of care purchasing the identified dietary and nutritional supplements given the nature of the goods. Nonetheless, those same consumers may mistake one trademark for another when such marks are as similar as they are here, because they are not likely to note the differences in the marks.⁵ *Hydrotechnic Corp. v. Hydrotech Int'l, Inc.*, 196 USPQ 387, 392-93 (TTAB 1977); *Educ. Dev. Corp. v. Educ. Dimensions Corp.*, 183 USPQ 492, 496 (TTAB 1974). Even careful purchasers who do notice the differences in the marks will not necessarily conclude that they indicate different sources for the goods, but will see the marks as variations of each other, pointing to a single source. *See, e.g., Kangol Ltd. v. Kangaroos U.S.A., Inc.*, 974 F.2d 161, 23 USPQ2d 1945, 1946 (Fed. Cir. 1992) (“What

⁴ To the extent Applicant seeks to apply *In re Strategic Partners*, 102 USPQ2d 1397 (TTAB 2012), based on ownership of the prior registration for the mark SHOT B, we do not find the facts here fall within the parameters of that “unique situation.” *Id.*, at 1399. Although the goods identified in the current application include goods that are legally identical to the goods identified in the prior registration, and the prior registration is over five years old and therefore “not subject to attack by the owner of the cited registration on a claim of priority and likelihood of confusion,” *id.*, at 1399, SHOT B12+ and SHOT B are only partially, rather than substantially, similar, as SHOT B12+ has three more characters than SHOT B. *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1748 (TTAB 2018), *aff'd mem.*, 777 F. App'x. 516 (Fed. Cir. 2019) (declining to extend *Strategic Partners* where an applied-for mark was “partially” similar to the mark in an existing registration owned by that applicant although the services were identical). The additional characters in SHOT B12+ result in a mark that is more than simply the plural form of SHOT B, which further distinguishes the instant case from *Strategic Partners*, where the marks were ANYWEAR and ANYWEARS. *Cf., e.g., Wilson v. Delaunay*, 245 F.2d 877, 114 USPQ 339, 341 (CCPA 1957) (“It is evident that there is no material difference, in a trademark sense, between the singular and plural forms of the word ‘Zombie’ and they will therefore be regarded here as the same mark.”).

⁵ We discuss the similarity of the marks in the next section of this decision.

is important is not whether people will necessarily confuse the marks, but whether the marks will be likely to confuse people into believing that the goods they are purchasing emanate from the same source.”) (citations omitted).

The second and third *DuPont* factors weigh in favor of likelihood of confusion, and the fourth *DuPont* factor is neutral.

B. Similarity or Dissimilarity of the Marks

Under this factor, we compare Applicant’s mark SHOT B12+ and Registrant’s mark SHOT-O-B12 “in their entirety as to appearance, sound, connotation and commercial impression.” *Detroit Athl.*, 128 USPQ2d at 1048 (quoting *DuPont*, 177 USPQ at 567); *see also Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citation omitted), *aff’d mem.*, 777 F. App’x. 516 (Fed. Cir. 2019); *accord Krim-Ko Corp. v Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted).

“The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *i.am.symbolic*, 123 USPQ2d at 1748 (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 558 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)).

Because similarity is determined based on the marks in their entireties, our analysis is not predicated on dissecting the marks into their various components. *Stone Lion*, 110 USPQ2d at 1161; *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). On the other hand, “there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Further, the marks “must be considered ... in light of the fallibility of memory” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014 (quotation omitted)). We focus on the recollection of the average consumer, here, an average purchaser of vitamins and supplements, who we presume exercises a heightened degree of purchasing care but normally retains a general rather than a specific impression of trademarks. *See id.* at 1085; *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 169 USPQ 39, 40 (CCPA 1971).

We also note that where, as here, the goods are legally identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the goods. *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (“When marks would appear on virtually identical goods or services, the degree of similarity

necessary to support a conclusion of likely confusion declines.”). *See also Bridgestone Ams. Tire Operations LLC v. Fed. Corp.*, 673 F.3d 1330, 102 USPQ2d 1061, 1064 (Fed. Cir. 2012) (“When the goods are identical, the appearance of a mark of similar sound, appearance, or connotation is more likely to cause confusion than if the goods are significantly different.”).

Applicant argues that the marks look and sound different due to the hyphens and the letter “O” in Registrant’s mark and the plus sign in Applicant’s mark, and the marks create “very different” commercial impressions when they are viewed in their entireties. App. Br., 6 TTABVUE 5-9. As a corollary, Applicant argues that Registrant’s mark is a “composite mark because there is no space between the words, dashes, letters or numbers,” and the Examining Attorney improperly dissected the marks.⁶ *Id.*, at 5-7. The Examining Attorney focuses on the visual, aural and connotative similarities between the marks because of the shared terms SHOT and B12. We agree with the Examining Attorney.

When considered in their entireties, we find SHOT-O-B12 and SHOT B12+ very similar: both begin with the word SHOT and end with a form of B12. SHOT is defined

⁶ Applicant also argues that Applicant’s mark sounds “much more similar” to Applicant’s registered SHOT B mark, “where the first part of the mark SHOT B sounds exactly the same. This is likely the main feature which distinguishes Applicant’s registered mark SHOT B from the Cited Mark resulting in no confusion in the marketplace, despite the co-existence of those two marks for over 15 years.” App. Br., 6 TTABVUE 7. Applicant summarily raises the same argument about lack of confusion between SHOT B and Registrant’s mark under the seventh, eighth and twelfth *DuPont* factors. *Id.*, at 6 TTABVUE 8. Regardless of the *DuPont* factor under which Applicant raises this argument, it is speculative, irrelevant and unpersuasive as it was when Applicant raised it under the fourth *DuPont* factor, discussed above. *See, e.g., Shinnecock Smoke Shop*, 91 USPQ2d at 1221 (Fed. Cir. 2009) (finding applicant’s allegations about similar marks irrelevant because each application must be considered on its own merits).

as “a small amount given or applied at one time,” as in “a shot of oxygen”; “a small drink” as in “drank a shot of espresso”; and “a small amount of a liquid used as an ingredient in a beverage: prepared a smoothie with a shot of wheatgrass.” February 9, 2022 Office Action, TSDR 6. And B12 is a vitamin specifically identified in the application and encompassed in Registrant’s identification of goods. *Id.*, at TSDR 6.

The marks differ by the plus sign in Applicant’s mark and the letter “O” with surrounding hyphens in the middle of Registrant’s mark. The plus sign in Applicant’s mark is “the symbol (+) indicating summation or a positive quality,”⁷ and merely reinforces the shared term B12, which refers to vitamin B12 in both Applicant’s and Registrant’s marks. As for the letter “O” with surrounding hyphens, while there is no “correct” pronunciation of a mark, *Viterra*, 101 USPQ2d at 1912, we disagree with Applicant that any consumer would verbalize the hyphens and refer to Registrant’s mark as “SHOT DASH O DASH B12.” App. Br., 6 TTABVUE 7. *See The Pierce-Arrow Society v. Spintek Filtration, Inc.*, 2019 USPQ2d 471774, at *31 (TTAB 2019) (“The presence of the hyphen in Applicant’s mark does not distinguish it from Opposer’s mark.”) (citing *Thymo Borine Lab. v. Winthrop Chem. Co.*, 155 F.2d 402, 69 USPQ 512, 514 (CCPA 1946) (hyphen in mark THY-RIN has “no significance in speech”) and *Mag Instrument Inc. v. Brinkmann Corp.*, 96 USPQ2d 1701, 1712 (TTAB 2010) (MAGNUM without hyphen is “essentially identical” to MAG-NUM with hyphen),

⁷ We take judicial notice of this definition from DICTIONARY.COM UNABRIDGED based on THE RANDOM UNABRIDGED DICTIONARY (2023) (accessed August 12, 2023). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *Cordua Rests.*, 110 USPQ2d at 1229 n.4; *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

aff'd mem., 2011 U.S. App. LEXIS 22673, 2011 WL 5400095 (Fed. Cir. Nov. 9, 2011)). Rather, we find ordinary purchasers of vitamins and supplements who encounter Applicant's mark SHOT B12+ and Registrant's mark SHOT-O-B12 likely will refer to the marks by using common English grammar, where the preposition "of" normally follows the word "shot" and precedes the noun that it modifies (e.g., "shot of espresso," and "shot of wheatgrass," per the dictionary examples noted above). Thus, although neither mark includes the entire preposition "of," we find consumers would view and verbalize each mark as "shot of B12." The marks therefore look and sound very similar.

Due to the shared terms SHOT and B12, which appear in the same order in both marks, we also find the marks convey the same meaning and overall commercial impression, with both connoting a small or single serving of vitamin B12. The differences between the marks are minimal and insufficient to distinguish them because the differences do not change the marks' meaning or commercial impression in the way that, for example, the additional word CLEAR in ALL CLEAR changes the meaning of the single word ALL. *Lever Bros. Co. v. Barcolene Co.*, 463 F.2d 1107, 174 USPQ 392 (CCPA 1972). *See also Shen Mfg. Co. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004) ("In addition, the pronunciation of THE RITZ KIDS sound like 'The Rich Kids,' leaving the impression of wealth, a concept tied strongly to [defendant] and not associated in any way with [plaintiff's] RITZ mark."). Applicant's reliance on these cases, among others, is misplaced because Applicant has

provided no alternative meaning of the marks SHOT B12+ and SHOT-O-B12, and we see none. App. Br., 6 TTABVUE 7-9.

Contrary to Applicant's assertions, App. Br., 6 TTABVUE 5-8, the Examining Attorney did not improperly dissect the respective marks into their component parts in order to find them similar, and neither have we. Rather, as we must, we have compared the marks in their entireties, leaving no part of either mark out of the overall analysis. *Nat'l Data*, 224 USPQ at 750 ("The basic principle in determining confusion between marks is that marks must be compared in their entireties"); *Franklin Mint*, 212 USPQ at 234 ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.").

While there are some specific differences between Applicant's mark SHOT B12+ and Registrant's mark SHOT-O-B12, we find that, in their entireties, the marks are very similar in appearance, sound, connotation and commercial impression due to the shared terms SHOT and B12, which appear in the same order in both marks.

The first *DuPont* factor also weighs in favor of a finding of likelihood of confusion.

C. Conclusion

Having considered all the evidence and arguments bearing on the relevant *DuPont* factors, we find confusion is likely between Applicant's mark SHOT B12+ and Registrant's mark SHOT-O-B12 for the legally identical goods identified in the application and cited registration. Accordingly, we do not reach the refusal that Applicant's mark is unregistrable without a disclaimer of SHOT under Section 6(a)

of the Trademark Act because SHOT is merely descriptive of the identified goods under Section 2(e)(1) of the Trademark Act. *See Azeka Bldg. Corp. v. Azeka*, 122 USPQ2d 1477, 1478 (TTAB 2017) (the Board has “discretion to decide only those claims necessary to enter judgment and dispose of the case”) (quoting *Multisorb Tech., Inc. v. Pactive Corp.*, 109 USPQ2d 1170, 1171 (TTAB 2013)); *Am. Paging Inc. v. Am. Mobilphone Inc.*, 13 USPQ2d 2036, 2039-40 (TTAB 1989), *aff’d*, 923 F.2d 869 (table), 17 USPQ2d 1726 (Fed. Cir. 1990) (non-precedential).

Decision: The refusal to register Applicant’s mark is affirmed under Trademark Act Section 2(d).

Bergsman, Administrative Judge, dissenting:

I respectfully dissent from the majority’s decisions to affirm the refusal under Section 2(d) of the Trademark Act because I find the facts of this case fall within the parameters of *Strategic Partners*.

In *Strategic Partners*, the Board reversed the Section 2(d) likelihood of confusion refusal because of the applicant’s prior existing registration of a substantially similar trademark for identical goods.

[T]he present case involves the unique situation presented by the coexistence of applicant’s existing registration with the cited registration for over five years, when applicant’s applied-for mark is substantially similar to its existing registered mark, both for identical goods. When we consider these facts under the thirteenth *du Pont* factor, we find in this case that this factor outweighs the others and leads us to conclude that confusion is unlikely.

Id. at 102 USPQ2d at 1400.

In this case, Applicant is seeking to register SHOT B12+ (standard characters) for “dietary supplements containing vitamin B12; multivitamin preparations containing vitamin B12.” Applicant claims ownership of Registration No. 4358731 for the mark SHOT B (standard characters) for “multivitamin preparations containing vitamin B.” Applicant disclaimed the exclusive right to use the letter “B.”

The “B” in Applicant’s mark SHOT B means vitamin B. The term “B12+” in the application at issue means “B12 plus.” Vitamin B12 is one of the B vitamins.

The water-soluble vitamins are vitamin C (ascorbic acid) and the B vitamins, which include thiamin (vitamin B₁), riboflavin (vitamin B₂), vitamin B₆, niacin (nicotinic acid), vitamin B₁₂, folic acid, pantothenic acid, and biotin.

“The water-soluble vitamins,” ENCYCLOPAEDIA BRITANNICA (britannica.com/science/vitamin/The-fat-soluble-vitamins) (accessed August 12, 2023). *See also* “vitamin B complex,” ENCYCLOPAEDIA BRITANNICA (britannica.com/science/vitamin-B-complex) (“The complex includes pantothenic acid, niacin, biotin, folic acid, riboflavin (vitamin B₂), niacin, biotin, folic acid, riboflavin (vitamin B₂), thiamin (vitamin B₁), vitamin B₆, and vitamin B₁₂ (cobalamin).”).

The MERRIAM-WEBSTER DICTIONARY (merriam-webster.com) (accessed August 12, 2023) defines “plus,” *inter alia*, as “falling high in a specified range,” “greater than that specified,” and “possessing a specified quality to a high degree.”

Consumers will perceive SHOT B as including a high quality vitamin B12 and, therefore, SHOT B12+ is substantially similar to SHOT B. Thus, I disagree with the majority finding that “SHOT B12+ and SHOT B are only partially, rather than

substantially, similar, as SHOT B12+ includes three additional characters than SHOT B.” Consumers do not focus on minutia such as the counting of the number of characters or syllables in a mark, but rather form “general rather than specific impressions” of marks. *See In re John Scarne Games, Inc.*, 120 USPQ 315, 316 (TTAB 1959) (“Purchasers of game boards do not engage in trademark syllable counting[;] they are governed by general impressions made by appearance or sound, or both.”). *See also B.V.D. Licensing Corp. v. Body Action Design, Inc.*, 846 F.2d 727, 6 USPQ 1719, 1721 (Fed. Cir. 1988) (“The purchasing public, we believe, does not indulge in such recognitional contortions but sees things as they are.”).

With respect to the goods

Dietary supplements containing vitamin B12;
Multivitamin preparations containing vitamin B12; and

Multivitamin preparations containing vitamin B,

I find the goods in part legally identical. Multivitamin preparations containing vitamin B encompass multivitamin preparations containing vitamin B12. *Hughes Furniture*, 114 USPQ2d at 1137.

Accordingly, I would reverse the Section 2(d) refusal to register.